IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

WP(C).No. 26888 of 2006(A)

OS.856/1993 of PRINCIPAL SUB COURT,KOLLAM
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PETITIONERS:
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1. PARAMU BRAHMADATHAN,
CHARUVILA VEEDU, MUNAYIL CHERRY,
PARAVOOR VILLAGE, KOLLAM DISTRICT.

2. JANAKI SATHYABHAMA,
CHERUVILA VEEDU, KUNAYIL CHERRY,
PARAVOOR VILLAGE, KOLLAM DISTRICT.

BY ADV. SRI.C.K.PAVITHRAN

RESPONDENTS:
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1. MANIKANTAN, S/O.ACHUTHAN,
PUTHENKADA VEEDU, MANNAKULAM,
ANCHUTHENGU DESOM, KADAKAVOOR VILLAGE,
THIRUVANANTHAPURAM DISTRICT,
NOW RESIDING AT P.B.NO.6132, DUBAI,
UNITED ARAB EMIRATES.

2. MALINI, D/O.JANAMMA,
SREEKRISHNA BHAVAN, KALAICODE CHERRY,
POOTHAKULAM VILLAGE, KOLLAM DISTRICT.

BY ADV. SRI.B.SURESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 TRUE COPY OF EXPARTE DECREE DTD.31.5.97 IN O.S. 586/93 OF SUB COURT, KOLLAM.

EXT.P2 TRUE COPY OF EXECUTION PETITION 129/02 DT.16.8.02 FILED BY HE RESPONDENT BEFORE THE SUB COURT-1, KOLLAM.

EXT.P3 TRUE COPY OF THE OBJECTION TO THE PROCLAMATION SCHEDULE DATED 28.9.06 WITH SANCTION PETITION DATED 28.9.06 FILED BEFORE THE SUB COURT, EXECUTION COURT, KOLLAM.

EXT.P4 TRUE COPY OF THE SALE NOTICE DATED 6.10.06 ISSUED BY THE SUB COURT, KOLLAM.

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 26888 OF 2006

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Dated this the 29th day of May, 2007.

J U D G M E N T

This writ petition is filed seeking to quash Ext.P4 sale notice. Both the sides entered appearance. An execution petition is filed for realisation of the amount due under a decree by sale of the properties. Two schedules of properties are shown as A and B schedule and the writ petitioner would submit that he does not have right over plaint A schedule property. The decree amount is less than Rs.50,000/- and according to the writ petitioner the value of the same will be Rs.1,00,000/- per cent. It is also submitted that there is a building situated in the property. As per the amended C.P.C. it is not mandatory on the part of the Court to fix an upset price for the property when the decree holder shows an amount and the judgement debtor also shows an amount, it is sufficient if both estimated values are shown in the draft proclamation. The Apex Court in so many decisions had made it clear that only the required property that is necessary to satisfy the decree debt be sold and a person need not be deprived of the entire property. So these factors are to be born in mind by

the executing Court while effecting sale of the property. Therefore, the writ petition is disposed of with the following observations.

(1) The Executing Court shall show the estimate value of the property as shown by the decree holder as well as by the judgment debtor in the draft proclamation.

(2) The executing Court shall consider whether the entire extent of the property is necessarily to be sold for realisation of the decree debt, in case it is satisfied that it is only necessary to sell a portion of the property, to satisfy the decree debt, that may be done.

(3) The lower Court shall, as stated above, revise the estimated value shown in the draft proclamation, the extent to be sold is to be determined and show the property to be proclaimed and sold by the judgment debtor after hearing both sides. Both the parties are directed to appear before the Executing Court on 29.6.2007.

M.N. KRISHNAN, JUDGE.

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